

**STATE BOARD OF EQUALIZATION**

916/445-6493

March 7, 1984

Mr. G--- T---
Pharmacy Supervisor
--- --- Hospitals
XXXXX --- ---
--- ---, CA XXXXX

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Dear Mr. T---:

Your letter of February 1, 1984 to Mr. Donald Hennessy, Tax Counsel, has been referred to me for reply. You request our opinion as to the correct application of tax to your sale of "Osmolite."

Osmolite is an isotonic liquid food which provides the user with complete balance nutrition. Apparently, this product is designed for patients who are particularly sensitive to hyperosmotic feedings, and can be used for the total or supplemental nutrition by oral feeding. An eight ounce serving of this product provides the user with 250 calories. The principal ingredients are water, hydrolyzed corn starch, sodium and calcium caseinates, coconut oil, and soy protein.

California Sales and Use Tax Law imposes a tax on the sale or use of tangible personal property in this state, unless such sale or use is otherwise exempt from taxation. Pursuant to Section 6359 of the Revenue and Taxation Code, the sale of and the storage, use, or other consumption in this state of "food products" for human consumption is exempt from tax. This exemption, however, does not apply to preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.

We are of the opinion that Osmolite is not sold as a dietary supplement or adjunct. Consequently, tax does not apply to the sale of this product since it comes within the definition of a "food product" as provided under Section 6359 of the Revenue and Taxation Code.

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:ba